



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 10790-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 21 April 2025. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a response to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 18 June 2001. On 14 January 2002, you were issued administrative remarks documenting fraudulent enlistment based on your failure to disclose pre-service illicit drug use. Despite this infraction, you were retained in the naval service and advised that any subsequent violations of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian convictions could result in administrative separation under Other Than Honorable (OTH) conditions. On 21 August 2002, you received nonjudicial punishment (NJP) for failure to obey a written general regulation and were again issued administrative remarks retaining you in the Navy and reiterating the potential consequences of

further misconduct. On 18 December 2002, you were issued additional administrative remarks retaining you in the Navy and documenting deficiencies in your conduct; specifically, multiple instances of unauthorized "horseplay." You were advised that continued misconduct could result in administrative separation and elected not to submit a statement in response. You were also issued administrative remarks regarding the command's hazing policy. On 6 January 2003, you received a second NJP for disobeying a commissioned officer's order, "not to engage in any unauthorized horseplay." For this offense, you were awarded three days of bread and water while in confinement. On 4 June 2004, you received a third NJP for wrongful use of cocaine. Consequently, you were notified that you were being recommended for administrative discharge from the Navy for pattern of misconduct, commission of a serious offense, and drug abuse; at which time you waived your rights to consult with counsel and to present your case before an administrative discharge board. Ultimately, the separation authority (SA) directed you be discharged with an Other Than Honorable (OTH) characterization of service for drug abuse and you were so discharged on 28 June 2004.

The Board carefully considered all potentially mitigating factors to determine whether the interest of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you incurred mental health concerns from an unjust NJP and being unfairly branded as a troublemaker. You believed this contributed to your substance use and separation from service. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred mental health concerns during military service, which may have contributed to your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 26 February 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, there are inconsistencies in the narrative over time that raise doubt regarding his candor or the reliability of his recall. Although the Petitioner claims he received an unfair NJP for behavior of which he was unaware was misconduct, the record reflects that he was counseled regarding appropriate action prior to the NJP. It is difficult to attribute his substance use to a mental health concern given pre-service substance use that was concealed prior to enlistment. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "there is insufficient evidence of a mental health diagnosis that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition."

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced

by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board noted you were provided several opportunities to correct your conduct deficiencies but continued to commit additional misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. The Board found no evidence that you were treated unfairly and noted you were warned repeatedly about your conduct. Finally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you have not provided any medical evidence in support of your claims. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity is attached to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

4/30/2025
